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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE FILING BY  
TUCSON ELECTRIC POWER COMPANY  
TO AMEND DECISION NO. 62103

) Docket No. E-01933A-05-0650  
)  
) COMMENTS OF AECC ON  
) TUCSON ELECTRIC POWER  
) COMPANY'S PROPOSED  
) RECOMMENDED OPINION  
) AND ORDER

Phelps Dodge Mining Company and Arizonans for Electric Choice and Competition (collectively "AECC"), through undersigned counsel, hereby submits the following comments on the proposed Recommended Opinion and Order ("ROO") submitted by Tucson Electric Power Company ("TEP") on March 16, 2007, in the above captioned docket.

**I. THE COMMISSION HAS A SUFFICIENT RECORD IN THIS DOCKET TO REJECT TEP'S CLAIM THAT THE SETTLEMENT AGREEMENT SETS STANDARD OFFER GENERATION RATES BASED ON THE MARKET GENERATION CREDIT ("MGC").**

An underlying theme in TEP's proposed ROO is the presumed need for additional information concerning the Company's various filed proposals in this docket. AECC agrees that there is insufficient information in the record concerning the impact of TEP's proposals to permit their adoption by the Commission, if the Commission were otherwise inclined to do so. At the same time, however, there is an abundantly-sufficient record in this docket to *reject* these proposals, as they each derive from TEP's primary claim that

1 the Settlement Agreement sets Standard Offer generation rates based on the MGC – and  
2 there is a full record for deciding this question in the negative. Unlike typical policy  
3 questions, for which there may be various shades of grey, the determination of whether or  
4 not the Settlement Agreement sets Standard Offer generation rates equal to the MGC is a  
5 straightforward, black-and-white issue.

6 **II. AS A GENERAL PROPOSITION, AECC DOES NOT OBJECT TO**  
7 **TEP'S PROPOSAL TO PROVIDE ADDITIONAL INFORMATION IN**  
8 **ORDER TO FURTHER SETTLEMENT DISCUSSIONS AMONG THE**  
9 **PARTIES AS STATED IN PARAGRAPHS 53-57 OF TEP'S PROPOSED**  
10 **ROO.**

11 In Paragraphs 53-57 of the proposed ROO, TEP sets out a basic element of its  
12 proposal: the Company will provide additional information to the Commission and Parties  
13 in order to further settlement discussions that could result in a mutually acceptable  
14 regulatory solution or an agreement to modify the 1999 Settlement Agreement and  
15 Decision No. 62103. AECC is willing to participate in such discussions and is open to  
16 receiving further information concerning the "hybrid proposal" introduced in the  
17 testimony of TEP witness James S. Pignatelli in his testimony during the hearing.

18 **III. AECC STRONGLY OPPOSES TEP'S PROPOSAL FOR RETAINING**  
19 **THE CURRENT LEVEL OF STANDARD OFFER RATES AFTER THE**  
20 **FIXED CTC EXPIRES, AS DESCRIBED IN PARAGRAPHS 49-51 OF**  
21 **THE PROPOSED ROO.**

22 **A. TEP's Proposal Would Eliminate a Customer Benefit in the**  
23 **Settlement Agreement with No Corresponding Concessions from the**  
24 **Company.**

25 It is indisputable that the 1999 Settlement Agreement requires TEP's rates to be  
26 reduced by an average of 0.93 cent per kilowatt-hour when the Fixed CTC expires, an  
event that is expected to occur in May 2008. It is also indisputable that the Settlement  
Agreement forbids any rate increase prior to January 1, 2009. Consequently, customers  
stand to experience significant cost savings during that intervening period.

TEP's proposed ROO would eliminate this benefit of the Settlement Agreement by

1 retaining the current level of Standard Offer rates after the Fixed CTC expires. TEP  
2 depicts its proposal as merely preventing a potential “temporary fluctuation of rates” and  
3 “providing protection for ratepayers through a credit against future rates if it is later  
4 determined that TEP is not entitled to retain these revenues.” However, the details of the  
5 proposal reveal a different story. Under TEP’s proposal, the foregone rate reduction from  
6 retaining the current level of Standard Offer rates would only be returned to customers if:  
7 (1) the Commission affirms TEP’s assertion that it is entitled to set Standard Offer  
8 generation rates equal to the MGC after January 1, 2009; or (2) the Commission rejects  
9 TEP’s MGC claim and sets rates based on a non-MGC method that results in a rate  
10 decrease. For the case in which the Commission rejects TEP’s MGC claim and sets rates  
11 based on a non-MGC method – but the new rates are NOT a decrease from current rates –  
12 the entire benefit of the reduction in the Fixed CTC would be permanently forfeited by  
13 customers. This outcome would constitute a one-sided change to the Settlement  
14 Agreement and is not acceptable to AECC.

15 AECC asks what concession is TEP offering that warrants the elimination of this  
16 customer benefit? In AECC’s view, the answer is “nothing.” While there has been  
17 allusion to the potential for a mutually agreeable settlement, no such settlement has  
18 occurred. In AECC’s view, the forfeiture of a customer benefit deriving from the  
19 Settlement Agreement can only reasonably occur in the context of a new agreement that  
20 resolves the issues in this case in a manner that is mutually agreeable to the Parties and  
21 acceptable to the Commission. Such a result would necessarily take account of any  
22 forfeited benefit to customers (and any corresponding benefit to TEP) as part of the  
23 balance struck in reaching a mutually-acceptable settlement package. In short, retaining  
24 the current level of Standard Offer rates as proposed by TEP cannot be a *condition*  
25 *precedent* to having settlement talks, but can only be the *product* of a new settlement  
26 agreement that is mutually acceptable to the Parties and the Commission.

1 The only approach to retaining the current level of Standard Offer rates that should  
2 even be contemplated at this time is one in which the full amount of the rate reduction that  
3 is foregone between the time the Fixed CTC expires and January 1, 2009 is tracked with  
4 the express intention of fully crediting this amount to customers (with interest) when new  
5 rates are established – irrespective of the method chosen for setting new rates and  
6 irrespective of the level of new rates. Any waiver of this credit should only be permitted  
7 to occur as part of a mutually agreeable settlement agreement as described above.

8 **B. The Mechanism Proposed by TEP To Implement Its Proposal to**  
9 **Retain the Current Level of Standard Offer Rates Is Based on the**  
10 **Company's Interpretation of the MGC – An Interpretation that Is**  
11 **Not Accepted by AECC or the Other Parties Taking a Position on the**  
12 **MGC.**

13 If, notwithstanding AECC's argument in A, above, Standard Offer rates are not  
14 reduced after the expiration of the Fixed CTC, the mechanism proposed by TEP to  
15 implement this action should be rejected, as it relies on an interpretation of the  
16 relationship between Standard Offer rates and the MGC that is not accepted by the other  
17 Parties. Paragraph 50 of TEP's proposed ROO describes TEP's proposed mechanism for  
18 implementing constant rates after the Fixed CTC expires. According to TEP's proposal,  
19 after the Fixed CTC expires, Standard Offer rates would remain unchanged by increasing  
20 the MGC by the amount of the expired Fixed CTC. This adjustment mechanism  
21 presupposes that Standard Offer generation rates are somehow connected to the MGC – a  
22 claim that is not accepted by any Party to this proceeding except TEP. Accordingly,  
23 adopting TEP's adjustment mechanism could be viewed as a de facto endorsement of  
24 TEP's claim in this docket that Standard Offer generation rates are somehow set by the  
25 MGC.

26 Instead of this backdoor endorsement of TEP's view of the MGC, if the  
Commission orders that Standard Offer generation rates are to remain unchanged, this  
policy can be implemented by simply ordering the obvious: "Standard Offer generation

1 rates – which have not changed in over seven years – are to remain unchanged.” There is  
2 no need to manipulate the MGC in order to accomplish this.

3 If such an order were issued, an ancillary question would be whether to retain  
4 current rates for Direct Access service also or whether Direct Access service would be  
5 allowed to experience the intended benefit of the Fixed CTC expiring. If the Commission  
6 opted for the former, then the Floating CTC would be increased by the amount of the  
7 expired Fixed CTC. If the Commission opted for the latter approach, then the Floating  
8 CTC would be constrained not to increase by the amount of the Fixed CTC. Neither  
9 approach requires changing the MGC.

10 **IV. THE RECITATION OF TEP’S FILED PROPOSALS IN PARAGRAPHS**  
11 **42-46 OF THE PROPOSED ROO PROVIDES DISPROPORTIONATE**  
12 **WEIGHT TO THESE PROPOSALS, ALL OF WHICH ARE**  
**STRONGLY OPPOSED BY AECC, RUCO, DEPARTMENT OF**  
**DEFENSE, AND STAFF.**

13 Presentation of TEP’s proposals in a ROO should be accompanied by language that  
14 makes it clear that these proposals are not acceptable to the other Parties.

15 **V. THE ADOPTION OF NEW SURCHARGES TO FUND DSM OR RES**  
16 **ACTIVITIES AS PROPOSED IN PARAGRAPH 52 CAN ONLY BE**  
**IMPLEMENTED IN THE CONTEXT OF A GENERAL RATE CASE.**

17 Paragraph 52 of the ROO provides for TEP to file a Demand-Side Management  
18 (“DSM”) Portfolio based upon TEP’s existing and “proposed” DSM Programs and a  
19 Renewable Energy Action Plan (“REST”). The DSM Portfolio and the REST are to be  
20 filed in a separate docket with the objective that the Commission will ultimately approve  
21 Full Cost Recovery for DSM and full recovery of the costs associated with the REST.

22 The nature of the proceeding before the Commission by which such approval  
23 would be granted is not indicated in Paragraph 52. However, it is the position of AECC  
24 and the other Parties that, if any change in rates contemplated by the DSM Portfolio or the  
25 REST results in an increase to customers, the change must be implemented as part of a  
26 general rate proceeding. *See Residential Utility Consumer Office v. Arizona Corporation*

1 Commission, 199 Ariz. 588, 20 P.3d 1169 (2001); Scates v. Arizona Corporation  
2 Commission, 118 Ariz. 531, 578 P.2d 612 (1978).

3 Paragraph 52 also provides that Time-of-Use Rates will be addressed and  
4 implemented in connection with the instant Proceeding. If the implementation of such  
5 rates is mandatory and results in an increase to customers, it is the position of AECC and  
6 the other Parties that the change in rates must be implemented as part of a general rate  
7 proceeding.

8 **VI. CONCLUSION**

9 AECC reiterates its willingness to participate in further settlement discussions to  
10 arrive at a mutually agreeable resolution to present to the Commission. However, this  
11 willingness to negotiate in good faith should not be interpreted as an indication that AECC  
12 believes more information is needed to decide this case on its merit. If further settlement  
13 discussions are not successful, AECC urges that a ROO be issued based on the record  
14 presented in the docket.

15 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of March 2007.

16 FENNEMORE CRAIG, P.C.

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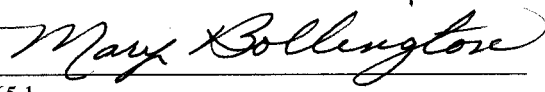
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